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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-137267-11

Date:

December 22, 2011

Legend:

Taxpayer =

Parent =

Sub 1 =

Sub 2 =

LLC 1 =

Pship 1 =

Investor =

Newco =

Pship 2 =

LLC 2 =

State A =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

d =

e =

f =

g =

h =

i =
i =

k =

l =

m =

Dear :

This letter responds to your September 7, 2011, letter requesting rulings on certain federal income tax consequences of a series of transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

FACTS

Parent indirectly owns all the stock of Sub 1, a State A corporation. Sub 1 owns all of the outstanding shares of Sub 2, a State A corporation. Parent, Sub 1, and Sub 2 are members of the same affiliated group of corporations that file a consolidated federal income tax return, with Parent as its common parent.

In Year 1, Sub 1 formed LLC 1. LLC 1 did not make an election to be classified as an association and therefore was classified as an entity disregarded from Sub 1, its owner.

During Year 2, for valid business reasons, Sub 1 contributed all of its interests in LLC 1 to Pship 1, a newly formed State A limited liability company, in exchange for member interests in Pship 1 and the assumption by Pship 1 of certain liabilities associated with LLC 1 (the "Partnership Formation"). Sub 2 also contributed certain assets in exchange for member interests in Pship 1. Pship 1 was classified as a partnership for federal income tax purposes. Immediately following the transfer, Sub 1 held a a percent partnership interest in Pship 1, and Sub 2 held the remaining b percent interest.

Among the assets held by LLC 1 and thus transferred to Pship 1 in the Partnership Formation were certain intangibles consisting of self-created goodwill, going-concern, and trade-name value (collectively, the “Intangibles”). The Intangibles had been in existence before 1993 and did not qualify for amortization under section 197 in the hands of Pship 1 because of the anti-churning rules of section 197(f)(9).

Later in Year 2, Sub 1 sold a c percent member interest in Pship 1 to Newco, a newly formed corporation owned by Investor, for \$g (the “Newco Acquisition”). At the time of the Newco Acquisition, Pship 1 had a section 754 election in effect. As a result, Pship 1 increased the basis of its assets with respect solely to Newco by approximately \$h under section 743(b). Approximately \$i of such increase was allocated to the Intangibles.

Following the Newco Acquisition, with respect to the Intangibles, Pship 1 was thereafter treated as if it held two intangibles: 1) a pre-1993 intangible (the “Pre-1993 Intangible,” which reflected Sub 1’s and Sub 2’s aggregate d percent portion of the Intangibles); and 2) a post-1993 intangible (the “Post-1993 Intangible,” which reflected Newco’s c percent portion of the Intangibles, which portion received the increase in basis under section 743(b)). As a result, Newco (rather than Pship 1, Sub 1, or Sub 2) was treated as having owned and used the Post-1993 Intangibles; thus, such share of the Intangibles was not subject to the anti-churning rules.

Following the Newco Acquisition, members of Pship 1 management, through a newly formed acquisition vehicle, acquired an interest in Pship 1 (the “Management Acquisition”) of e percent.

In addition, in Year 3, Sub 1, Sub 2, and Newco formed, Pship 2, a new State A LLC classified as a partnership for federal income tax purposes. Pship 2 then formed LLC 2, a wholly-owned LLC disregarded as an entity separate from Pship 2 for federal income tax purposes. Sub 1, Sub 2, and Newco each contributed their interests in Pship 1 to Pship 2, and Pship 2 contributed the interests in Pship 1 to LLC 2. Pship 1 was then a wholly-owned subsidiary of LLC 2. For federal income tax purposes, this transaction was treated as a partnership continuation (or conversion) under Rev. Rul. 84-52, 1984-1 C.B. 157, and its progeny, with the original partnership treated as continuing with a simple name change.

The Conversion Transaction

In Year 4, to facilitate an initial public offering (“IPO”) of its stock, Taxpayer undertook the following transactions (collectively, the “Conversion Transaction”):

- (i) On Date 3, Pship 2 filed an entity classification election under Treas. Reg. § 301.7701-3(a) (the “Election”) to be classified as a corporation for U.S. federal income tax purposes, effective Date 2.

- (ii) On Date 3, Pship 2 filed a certificate of conversion under State A General Corporate Law to convert from a State A limited liability company into a State A corporation and changed its name to Taxpayer.
- (iii) On Date 3, Taxpayer conducted an IPO of its shares of common stock. Immediately after the IPO, Taxpayer had k shares outstanding. Sub 1, Sub 2, and Newco originally received l shares of Taxpayer and sold a combined m shares in the IPO, or approximately n percent of the total outstanding stock (the "Sale").

As a result of the Election, (i) Pship 2 was deemed to contribute all of its assets to Taxpayer, a newly formed corporation, in exchange for all of the stock of Taxpayer and the assumption by Taxpayer of the Pship 2 liabilities; and (ii) Pship 2 was deemed to liquidate, distributing the Taxpayer stock to its partners. On the date of the Election, the aggregate amount of Pship 2's liabilities (including all of the liabilities of its disregarded entities) exceeded its total adjusted basis in assets (and the assets of all of its disregarded entities), by \$j.

REPRESENTATIONS

Taxpayer makes the following representations regarding the Conversion Transaction:

- (a) No stock or securities were issued for services rendered to or for the benefit of Taxpayer in connection with the Conversion Transaction.
- (b) No stock or securities were issued for indebtedness of Taxpayer that were not evidenced by a security or for interest on indebtedness of Taxpayer which accrued on or after the beginning of the holding period of Pship 2 for the debt.
- (c) The Conversion Transaction was not the result of the solicitation by a promoter, broker, or investment house.
- (d) Pship 2 did not retain any rights in the property transferred to Taxpayer.
- (e) Pship 2 did not retain any significant power, right, or continuing interest, within the meaning of section 1253(b), in the franchises, trademarks, or trade names transferred.
- (f) The value of the stock received in exchange for accounts receivable was equal to the net value of the accounts transferred, *i.e.*, the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.

(g) The aggregate fair market value of the property transferred to Taxpayer was equal to or exceeded the aggregate adjusted basis of such property immediately after the Conversion Transaction.

(h) The aggregate fair market value of the assets transferred by Pship 2 exceeded the sum of (a) the amount of liabilities assumed (as determined under section 357(d)) by Taxpayer in connection with the Conversion Transaction, (b) the amount of liabilities owed to Taxpayer by Pship 2 discharged or extinguished in connection with the exchange, and (c) the amount of any money or fair market value of any other property (other than stock permitted to be received under section 351(a) without the recognition of gain) received by Pship 2 in connection with the exchange. The fair market value of the assets of Taxpayer exceeded the amount of its liabilities immediately after the exchange.

(i) As noted above, the sum of the adjusted basis of the property transferred by Pship 2 to Taxpayer was less than the sum of the liabilities assumed (as determined under section 357(d)) by Taxpayer. As a result, gain was recognized under section 357(c) in the Conversion Transaction.

(j) The liabilities of Pship 2 assumed (as determined under section 357(d)) by Taxpayer were incurred in the ordinary course of business and to make distributions to its partners and were associated with the assets to be transferred.

(k) There was no indebtedness between Pship 2 and Taxpayer, and there was no indebtedness created in favor of Pship 2 as a result of the Conversion Transaction.

(l) The transfers and exchanges occurred under a plan agreed upon before the Conversion Transaction in which the rights of the parties were defined.

(m) All exchanges occurred on approximately the same date.

(n) There is no plan or intention on the part of Taxpayer to redeem or otherwise reacquire any stock issued in the Conversion Transaction.

(o) Taking into account any issuance of additional shares of Taxpayer stock; any issuance of stock for services; the exercise of any Taxpayer stock rights, warrants, or subscriptions; a public offering of Taxpayer stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Taxpayer to be received in the exchange, Pship 2 was in "control" of Taxpayer within the meaning of section 368(c).

(p) Pship 2 was deemed to receive stock in Taxpayer approximately equal to the fair market value of the property transferred to Taxpayer.

(q) Taxpayer intends to remain in existence and retain and use the property transferred to it in a trade or business.

(r) There is no plan or intention by Taxpayer to dispose of the transferred property other than in the normal course of business operations.

(s) Pship 2 and Taxpayer each paid its own expenses, if any, incurred in connection with the Conversion Transaction.

(t) The Conversion Transaction did not constitute transfers of property to an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).

(u) Pship 2 is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.

(v) Taxpayer is not a “personal service corporation” within the meaning of section 269A of the Code.

(w) The Conversion Transaction is motivated in substantial part by bona fide business purposes unrelated to federal income taxes. The Conversion Transaction is economically meaningful apart from any anticipated federal income tax benefits.

(x) Pship 1 was a validly formed partnership.

(y) At the time of the Newco Acquisition, Newco was unrelated to Sub 1 and Sub 2 within the meaning of section 197(f)(9)(C).

(z) Pship 1 had a valid section 754 election in effect for the taxable year that included the Newco Acquisition.

(aa) Newco had an approximately c percent share of Pship 2's profits, losses, and capital at the time of the Conversion Transaction.

(bb) Pship 2 filed its final partnership return timely for the short tax year ended Date 1.

(cc) The Conversion Transaction was not undertaken with a principal purpose to avoid the operation of the anti-churning rules of section 197(f)(9) and Treas. Reg. § 1.197-2(h)(11).

RULINGS

(1) For Federal income tax purposes, the Conversion Transaction will be treated as if (a) Pship 2 transferred all of its assets to Taxpayer solely in exchange for stock of Taxpayer and the assumption by Taxpayer of the liabilities of Pship 2 (the “Exchange”) and (b) Pship 2 liquidated, distributing the Taxpayer stock to its partners (Sub 1, Sub 2, and Newco) (the “Distribution”) (Treas. Reg. § 301.7701-3(g)(1)(i)).

(2) The Exchange will be treated as an exchange to which section 351(a) applies (see Rev. Rul. 84-111, 1984-2 C.B. 88). Pship 2 will recognize gain under section 357(c) equal to the excess of the sum of the liabilities assumed by Taxpayer in the Exchange over the sum of the basis of the properties transferred by Pship 2 to Taxpayer in the Exchange.

(3) The basis of the shares of Taxpayer stock received by Pship 2 will be the same as Pship 2's basis in the assets surrendered in exchange therefore, reduced by the liabilities assumed by Taxpayer and increased by the gain recognized by Pship 2 in the Exchange (section 358(a)(1)).

(4) Provided that Pship 2 held two separate intangibles at the time of the Conversion Transaction, namely, (i) the Pre-1993 Intangible and (ii) the Post-1993 Intangible, which portion received the increase in basis under section 743(b), Pship 2 will be viewed as having transferred these two separate intangibles to Taxpayer.

(5) Taxpayer will recognize no gain or loss on the Exchange (section 1032).

(6) The basis of each asset of Pship 2 received by Taxpayer in the Exchange will equal the basis of that item in the hands of Pship 2 immediately before the Exchange, increased by the amount of gain recognized by Pship 2 under section 357(c) (section 362(a)).

(7) In the hands of Taxpayer, any basis increase as a result of Pship 2's recognition of section 357(c) gain that is allocated to the Post-1993 Intangible will not be subject to the anti-churning rules of section 197(f)(9).

(8) The holding period of each asset of Pship 2 received by Taxpayer in the Exchange includes the holding period of that asset in the hands of Pship 2 immediately before the Exchange (section 1223(2)).

CAVEATS

No opinion is expressed about the federal tax treatment of the Conversion Transaction under other provisions of the Code or Regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Conversion Transaction that are not specifically covered by the above rulings.

Further, no opinion is expressed or implied on (i) the tax treatment under section 197 of any transaction described above prior to the Conversion Transaction, (ii) the application of the anti-churning rules of section 197(f)(9) and section 1.197-2(h) to any basis increase that is allocated to the Pre-1993 Intangible as a result of Pship 2's recognition of section 357(c) gain, and (iii) how to allocate the gain recognized by Pship 2 under section 357(c) between the Pre-1993 Intangible and the Post-1993 Intangible.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the Federal income tax return of each party involved in the Conversion Transaction for the taxable year in which the Conversion Transaction is completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Lewis K Brickates
Chief, Branch 4
Associate Chief Counsel (Corporate)